1:Barnes E-5 (1946-1949) 1954 FR5 Ngoni FR5
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than this. Annual reports often draw attention to the smooth working of Native Courts and their impartiality, while attempts are made to establish British rules of evidence and of legal procedure generally. By trying thus to isolate the judiciary from the Native Authority and, more recently, by the proposal to introduce an entirely separate police force into rural areas, the Administration is engaged on an active policy of social change. One change that has already occurred widely is in the role played by the chief in his court. We have seen that traditionally disputes were settled by the senior lieutenants of the segment concerned and referred to the chief only if the lieutenants did not agree, for the chief represented the unity of the people and was above all disputes. When Administrative officers began to supervise the work of Native Courts they usually interpreted the chief's absence from his court as neglect of his duties. Pressure was put on chiefs to attend and participate in their courts, another step towards the secularization of their office. Nowadays some Ngoni chiefs stay out of their courts, others actively hear cases in them, and others drift in and out, sometimes intervening, sometimes waiting for difficult issues to be referred to them. The changed Native Court is one of the agencies whereby the transition from small-scale to large-scale society is to be made. The very successes which were hailed generally for Native Courts in Africa on the introduction of Indirect Rule are surely evidence of the importance attached by the Administration to maintaining courts of the right kind.

The role of the court in the essentially political relationship between the Administration and the Native Authority is made clear when we consider the sources of law enforced in the courts. I have described elsewhere[10] how many of the regulations sought for by the Administration are introduced as Native Authority Rules and Orders, which are then approved by the Administration. This is a harmless legal fiction which worries no one, since new legislation emanating from within the counties is enforced or not quite independently of whether or not it is referred to the Administration and is included in its list of Native Authority legislation. But it is significant that even this fiction can have political significance, for recently it was suggested that a soil erosion law, which had been introduced as a Native Authority Order, would be more accurately described as an Administrative rule which the Native Courts were empowered to enforce. This suggestion was rejected by a meeting of chiefs, who stated that they wished to retain the

[10] Barnes, 'Political development', pp. 102-3.

1:Barnes E-5 (1946-1949)1954 FR5 Ngoni FR5
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rule as a Native Authority Order.[88] Thus the chiefs preferred to appear as legislators enforcing their own laws rather than as the judicial agents of the Administration.

Besides the Administration, other groups external to the indigenous system endeavour to influence the action of the courts. Thus missions work through chiefs to try to prevent the granting of divorces in the courts, traders endeavour to get their disputes with Africans heard in Native Courts rather than in those of the Administration, and farmers request courts to hear promptly cases which concern their employees.

Occasionally the Ngoni chiefs meet together with their people and formally make a new law. This appears to have happened about once in each decade. Yet in the courts new decisions are constantly being taken since the circumstances in which disputes arise are continually altering. The way in which these decisions are imposed throws light on the position of the court within the county, for many of these new decisions, precedents as we would call them, are introduced under the guise of a revival of some good but lately neglected tribal custom. There is no recorded corpus of Native law and custom which the Native Courts are empowered to enforce and, therefore, to say that a new decision is merely a revival of an established usage satisfies the requirements of the Administration, provided the usage is not 'repugnant to natural justice and morality'. On the other hand, it enables the court members to legislate without referring the matter to a meeting of the whole tribe or county, at which anyone would be free to speak his mind. Thus the group of persons who are in power in the court further entrench their position.[89]

9. *Moral and physical sanctions*

The counties and the tribe persist as social groups despite the ease with which their members may move away to other surroundings. The Native Authority remains in power, and its courts are full of litigants, despite the unequal distribution of privileges and rewards. In a general sense the system works because there are moral as well as physical sanctions behind the rulings of the court. There is general agreement about the rights and wrongs of the actions with which the courts have to deal, and it is this that in the end usually makes a man pay damages and fines that have been awarded against him rather than the threat of the Administration's force behind the court. The decisions of the courts are subject to

[88] *African Affairs*, report, 1948, p. 47.
[89] For a further analysis of this legislative process, see my paper, 'History'.

[p. 88]

CHAPTER IV

COURTS AND OFFICIALS

121 177 671 The Ngoni claimed that when they established their kingdoms in Nyasaland they introduced a new idea of law, a different system of courts, and a different procedure for conducting cases in those courts, from those found among the local peoples. Within their kingdoms they imposed on all their subjects these ideas, courts and legal procedure as part of their government, applied to the conquerors and the conquered alike. We shall consider in this chapter only those aspects of the courts and the legal system which were related to the political structure. The categories of crime, the degree of punishment, the sanctions for enforcement of the law, and the effect of the judicial procedure on the balance of equilibrium in the community, all belong to a specialized study and are not included here.

The Ngoni Concept of Law

692 643 671 We begin with two texts, the first from the northern kingdom by Cibambo, the second by Ishmael Mwale the Treasurer of the Paramount in the central kingdom.

"(1) The Ngoni seem to have been born with a gift for leadership or rule. Though they were a wandering tribe, yet there was one Paramount from whom proceeded the laws for the good government of the people. All the lesser chiefs and headmen received from him the leadership of the people. [203] Though they had no way of writing to each other, they kept their unity by messengers passing between them. The Paramount had power to call gatherings from time to time, in which they talked of the affairs of the country. In these gatherings the old men and the men of repute who had a point to make were heard in criticism and made suggestions for the building up of the realm. By this means the Paramount and his counsellors learned of and understood the thoughts of their people. It was in such large gatherings that the laws of the country were delivered to the people, so that they might hold fast to them and not be punished unreasonably for breaking them in ignorance. After they came back from these gatherings, the headmen and men of standing gathered together their villages to tell the people what had been spoken in the great council of the Paramount, and told them carefully about the laws which had come from the gathering.

173 671 (2) Before the Ngoni came to this country the villages were small and isolated from one another. There was constant pouncing on people to catch them as slaves. It was unsafe to go even a quarter of a mile from one village to another, because a man might be in hiding and pounce out and catch you and take you off to his village as a slave, and there was no redress and no case was heard. Most people never went beyond the

2: Read E-5 (1935-1939) 1956
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boundaries of their own village, and they were afraid to travel even in a large party of twenty or thirty. So no one had any wisdom beyond that of his own village and family. When the Ngoni came they had one law for all people and they had courts to hear cases where this law was enforced. There was freedom to travel in the land where the Ngoni ruled, because they had peace within their boundaries. Therefore, we say: this was the kind of peace we had.

In these two texts we have one major concept of Ngoni law with three chief ways in which it was implemented. The concept was that there was 'one law for all people' and that the knowledge of and enforcement of this law brought internal peace and resulted in good government in the country. There was one source of law as there was one source of political and military authority—the Paramount. As Cibambo points out, the Paramount delegated his authority for carrying out the law to chiefs and headmen and depended on his 'old men and men of repute' to keep him in touch with the thoughts and desires of all his subjects, so that he might adjust the enforcement of the law to bind the people to him. He also called large gatherings of all the chiefs and *alumuzana* and headmen in order that they might hear from him any new laws and regulations and understand them so that they in turn could make them known to their people. In the intervals between the holding of these large gatherings, which took place not more than once or twice a year, messengers passed constantly from the Paramount's village to all the areas of the chiefs and *alumuzana*, reporting to them about decisions taken at the royal village on matters affecting the country as a whole, and taking back reports to the Paramount on what was happening in the outlying districts.

I attended two of these annual meetings of the chiefs and *alumuzana* and headmen in the central kingdom. They took place not at the Paramount's village but at a more central spot for the whole territory. The people were drawn up in a square formation, with the Paramount at one end supported by his 'mouthpiece' (*mlomo wenkosi*), who always spoke for him, with the six Subordinate Native Authority chiefs beside him, and the councillors (*isinduna*) messengers and other officials of his court and of the S.N.A. courts arranged in order of precedence, facing the crowd as they did during court sessions. On the three sides of the square in the front ranks were the *alumuzana* and the headmen of their villages, sitting in territorial groups, and behind each headman were the *madoda* or senior men of the village, and behind them again the *amajaha* or young men. I watched this assembly of 3,000 to 4,000 people being arranged, as they arrived, by the *isinduna* of the Paramount's court and the *isinduna* of the six chiefs. They took up their places as though on a military parade, and once placed there was no further movement. The effect was that of a barrack square in the straightness of lines and orderliness of behaviour. After all was in order the Paramount

2: Read E-5 (1935-1939) 1956
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going on for years. The land was apparently unused by anyone on the Portuguese side of the boundary road, and the need for extra land for villagers living on the British side was urgent. The Portuguese authorities had been charging rent for the gardens, a shilling or so per small plot, which the Nyasaland men had paid after being threatened with confiscation of their crops. This prolonged struggle had tried everyone's temper and endurance, and when it was announced that it had been arranged that gardens might be hoed without payment, there was a great roar of applause. The *isinduna* gave them time to talk among themselves after this announcement, to work off pent-up feelings. The other popular item was that the Paramount would have his own agricultural show at Ncheu in the coming year. He had asked Government permission to hold it, which had been granted, and he had money in his treasury to pay the expenses. European officers would come and judge the exhibits and the best would be sent on to the all-Nyasaland show at Blantyre. This announcement was greeted with cheers, a number of questions were asked and much talk went on in the ranks.

This account of the Paramount's annual gathering illustrates several of the points made in the two texts quoted. It was the only formal occasion when the Paramount met as one body all those who bore authority in his territory under him. The kind of laws and regulations which were promulgated at these meetings were previously discussed by him with his officials and the chiefs, and their presence at his side, facing the assembly, made it clear to the people that the laws came from the Paramount and had the support of his subordinate chiefs. The freedom of discussion in the council gave anyone who had something to say the opportunity to stand up and say it. There was no sense of the business being put over quickly. The *isinduna* gave speakers time to express themselves, and allowed time to elapse for other speakers to get up. They were more lenient with the speakers at this meeting than they were with witnesses in the courts, and only once or twice in the sessions, which lasted six or seven hours, was a man addressed from the platform and told: 'Speak well that we may hear your words.'

This method of putting new laws and regulations before the people illustrated the concept of one law for all, and of one source of law-making within the territory, namely the Paramount, whom they saw before them as the centre of the group of chiefs and leaders. The procedure therefore gave strong support to the political structure, for it was only on the occasions of this assembly of all the Paramount's office-bearers that all those in authority could be seen together as an authority-wielding group, their relative importance being indicated by the order in which they sat. The procedure also gave support to the policy of political assimilation, for in that assembly of several thousand people, the great majority were not of trans-Zambezi clans, and therefore not acknowledged as Ngoni so far as tribal origin was concerned. They

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were, however, and they realized it at such assemblies, the people of the Paramount, and he was to them the visible symbol of their unity in one kingdom.

The Court System of the Ngoni

692 The enforcement of the laws as announced and discussed at these assemblies was the business of the courts, where the laws themselves were interpreted and often elaborated on occasions of an open breach.

The relationships of the courts in the kingdom followed the hierarchical pattern of the political organization. All minor cases were heard and, whenever possible, settled at the village level. If the plaintiff failed to get satisfaction, or if the village headman was unable to get his judgement accepted, he had to go with the litigants to the chief's court, and [698] if he failed there, the case could be taken to the appeal court of the Paramount. There were certain cases, such as murder and witchcraft, which in pre-European days could only be dealt with in the Paramount's court.

Some confusion arose over the use of one term 'court' for every type of institution which exercised judicial functions. The Nyanja term used in central Ngoniland for the courts at the lowest level was *bwalo*, literally the open space in front of the *indlunkulu* in any Ngoni village. Nothing could be apparently more informal than the discussion among a group of senior men called together by the headman, on a verandah or under a big tree, in order to settle quarrels and hear complaints. No formal records were kept, there was no clerk, and there was no summing up or pronouncement of judgement. There was, if the meeting was successful, general agreement about the action necessary and about who ought to initiate action. Above the level of this village headman's court were the courts of the *abamnumzana* held at their head villages, and above them again the chiefs' courts. After 1933 the courts of the *abamnumzana* gave place to the courts at the head villages of the chiefs. The proceedings there were more formal and included presenting evidence, defending the case and pronouncing judgement on cases rather than, as in the villages, talking things over and appealing to certain principles to re-establish equilibrium and resolve disputes.

[622] The Ngoni nevertheless always recognized these courts at the village level as an integral part of their system. It was the mark of a good headman that he should be able to settle the minor cases in his village without [563] constant reference to higher authority. The majority of villages under Ngoni rule were villages of local tribes who had surrendered to, or been conquered by, the Ngoni. The headmen were therefore of the local tribe, as a rule surrounded by their kinsmen, and their position carried with it the necessity of relating local tribal custom, especially in matters involving marriage and family affairs, to the legal principles and procedure of the Ngoni courts. Many cases came before the courts in

695 suspected a witness of lying, they accused him of doing so after he had told his story. If he persisted in his version of the events, and they still thought he was lying, they cross-questioned him, and when the point where he contradicted himself was reached they turned on him and said: 'You lied. Now you have said you lied. You do not speak well.'

671 695 In the following account of Ngoni law by Cibambo there are two main emphases. One is on the existence of law, in the sense of a norm of good conduct, conformity to which was expected and enforced. The text at the beginning of this chapter showed how the law was made known to all the inhabitants of the country, so that ignorance could not be pleaded as an excuse for law-breaking. The other emphasis is on decorum and the regular and accepted pattern of behaviour expected in the courts, and on the Ngoni hatred of bribery, which was claimed by them, and on the whole endorsed by Europeans.[1] Respect for the law, for the court in session and for the judgement, are expressed in Cibambo's account of the proceedings, and the winner of the case (though formerly it was the loser) expressed his thanks, after judgement was given, to the Paramount or the chief, and to the elders.

671 692 ¶ The laws and the power to punish disturbers of the peace were in the power of the Paramount and those who were under him. If there was a bad case in which the guilty man deserved death according to the law, such a matter was in the power of the Paramount and the lesser chiefs who helped him, and of them only. It was the same in the case of anyone who deserved to be despoiled of all his possessions because of his wrong-doing. The law was a protection for the people who might have been killed causelessly by their masters if they had had the power. People who were in danger from those who were above them, in danger of confiscation or of death, ran to the younger brothers of the Paramount or to the Paramount himself or sometimes they ran to the great *isinduna*. Praises had been added to those of Chief Mtwalo for this very reason that he had saved many whom Mbelwa had wanted to kill *'Isifuba esinamazwi, nitalo nkabatetala abalumuzana'* (a chest with words which spoke for the men of noble birth).

692 If people quarrelled in a village and could not be reconciled it was the work, as it is today, of the headman to try and bring them together, and if he thought that one had wronged the other he ordered him to bring something to recompense the other. Such recompenses were small things, from beads to a goat, perhaps an axe or a hoe. If the headman found he could not settle the business he went with them himself to the next court, to the head of the group of villages, and the standard of the payment increased. Serious cases went to the courts of the chiefs but these cases were few and not like today. People were very much afraid of each other

[1] On the walls of Paramount Mbelwa's court in Mzimba district in north Nyasaland were painted three sayings in English and in Tumbuka. Over the Paramount's chair was written 'Justice is blind'; by the place where the witnesses stood to speak, 'The law has no respect of a person'; and over where the general public sat 'Everyone is equal before the law'.

2: Read E-5 (1935-1939) 1956
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643 all their things. Even when the Paramount agreed that a man should be
682 killed he ordered that all his possessions were to come to him, stock, slaves, wives and children. These were called *izini zenkosi*, the things of the Paramount, and they were divided among the houses of the Paramount, and the master of the man killed got nothing. This was done to teach the fathers of the villages that they should not sentence their people to death because they coveted their goods or people. The Paramount taught them by taking all the belongings of the one killed and they got nothing. Of course the Paramount's and chiefs' villages grew quickly in
684 this way. At the beginning the punishment for adultery and murder was
178 death; in adultery both the man and the woman were killed. Beginning from the time of Mbelwa and Mtwalo the penalty for adultery has been changed. The man who did it was despoiled of his goods or paid compensation. The courts agreed that any man wronged by such adultery could go with a war-party to the village of the guilty man and take what he wanted, but not kill any person. The Paramount took no notice of such an affair.

671 No account of the conduct of cases in Ngoni courts would be complete without reference to the popular interest in and support for the law. After a day in the courts the *isinduna* and the *amadoda* talked of almost nothing else. They went over and over the details of the cases, and recalled former cases of a similar kind and compared the judgements given. They criticized each other sharply for the handling of cases, and such criticism was taken well on the whole, as a contribution to the process of interpreting and enforcing the law rather than as a personal affront. The attendance of the public at the court sessions was encouraged so long as they observed due decorum. When talking broke out among the onlookers, the *induna* in charge bellowed 'Silence' in a voice of thunder. If a group of women continued to chatter and giggle after the *induna* had called for silence, he told them to go home. The
[857] interest in courts and cases extended to the play of children and to the conduct by the boys of their own affairs in the *lomesi* or boys' dormitory. I often saw the young son of a chief or *induna* organizing his playmates into a court and allocating roles to them and in his play imitating the voice and gestures of his father.

631 NGONI OFFICE-BEARERS

623 In Chapter II of Part I we stated that the main element in the Ngoni
645 political system in the 1930's was a ruling aristocracy supported by a
[565] hierarchy of officials. In this chapter we shall first look at two texts, one by Cibambo on the northern kingdom and the other by a big *induna* in the central kingdom, explaining the relationship of the different office-bearers to the Paramount. We shall see how there were in effect two groups of office-bearers, one related to the territorial divisions of the kingdoms, and the other consisting of state or national officials and those connected with the royal village. There was no set of terms which could

3: Read E-5 (1935-1939)1960
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353 592 [562] women's. For all ceremonies the men sat on the right side, and the women on the left, the place of honour for the leading man and woman being by the main door-posts. No young man or woman ever thought of sitting near them. The other place of significance lay between the fire and the back of the hut on the right-hand side; it was known as the [778] [769] 'place of the spirits', the 'ancestors' corner', where the baskets and spears and other ritual objects were kept which were used in the ancestral cult. Only the owner of the hut or those taking part in the ritual could approach this corner.

In this land, into the cultural pattern of Ngoni village and household life, the Ngoni children were born. In such villages and homes they passed their earlier years, and grew from boys and girls to young adults.

The Ngoni kingdoms

642 When the Ngoni made parts of Nyasaland their homeland they set up conquest states on the pattern which they had been familiar with in southern Africa. Where they settled, [721] they either conquered the local peoples who lived in that area, or accepted their submission. Until the British ad- [648] ministration was established the Ngoni carried on wars and raids against neighbouring peoples to enlarge the boundaries of their kingdoms. As a conquest state, similar to that of the [162] Ndebele in Southern Rhodesia, the population of the Ngoni kingdoms was of mixed origin, some whose ancestors came from Natal, some from the territories passed through on their northward march, and some from Nyasaland itself.

The kingdoms were organized on a centralized pattern [643] with the Paramount Chief as supreme ruler and subordinate chiefs under him. The Ngoni code of law operated in the [671] [692] courts of the chiefs, and, as they proudly said, 'there was one law for all people'. Military service was required from [702] [691] all young men, and each territorial chief had to bring his quota of warriors to the Paramount's village when a war summons went out. Military service, obedience to the law,

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3: Read E-5 (1935-1939)1960
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parallel of the Jews of the Old Testament preparing the way for the Christian era to illustrate and drive home their belief that they, the Ngoni, had prepared the way for the Christian Gospel in Nyasaland. 'Were we not also a people who hated idols and images? We too tried to reach the Great God through our ancestor spirits, but we failed, until the mission came to teach us.' 'We held together the people of this land under one rule so that the missionaries could travel safely and spread the Gospel teaching.' These beliefs were stated so often that they became almost standard formula, and the incongruity of this picture with some of the warlike situations recorded by the earliest missionaries was ignored and forgotten. In the churches, where the people sat on mats, Sunday by Sunday, facing their Ngoni ministers, rising to sing, in their typical Ngoni harmonies, Christian hymns set to former Ngoni war tunes—in this setting Ngoni history was brought home, interwoven with the new teaching, to young adults who formed the majority of the congregation. For Ngoni elders it was something more than a reminder of their past. It was setting the Ngoni people in a special relationship to the European missionaries and the new learning, compensating for the passing of military power and political supremacy by establishing Ngoni cultural superiority over their neighbours. This gave some spiritual reassurance to a people in the throes of political change, and it was a lesson which lost none of its significance for the young adults who heard it.

Ngoni law

'There was one law for all the people. No one could be ignorant of the law.' These were the words, quoted in Chapter I, which the Ngoni used frequently to describe the importance of law in their culture, its role in the political unification of their own and subject peoples, and the responsibility, laid on all adults, for knowledge of the law and conformity with its demands. An incident in a court of law, which was unforgettable to an anthropologist, was a case in which a chief sat

4: Barnes E-5 (1946-1949)1951 FR5 Ngoni FR5
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unless he has paid bridewealth, the children will go to her relatives, whatever the cause of the divorce and whichever party is at fault. He can then offer bridewealth to secure custody of the children at the same time as he loses the services of his wife.

Bridewealth to-day is almost entirely concerned with the custody of children of the marriage and does not affect the rights of a man in his wife. These rights are determined by a payment which probably did not exist in the old marriage system and which we may call the legalization payment.[1] This payment is now the most important in marriage and is the only one recorded on the printed marriage certificates issued by the Administration through the Native Authorities. The Ngoni believe that the word has been taken from the Cewa, although the Cewa use the word differently. A law was made in about 1944 by the Ngoni chiefs fixing the amount of the legalization payment at a minimum of thirty shillings. Prior to this edict smaller amounts were more usual. The way in which the magnitude of the payment has varied through time can be seen from Table VII. Some people do not follow the law and pay less than thirty shillings; the majority pay the legal amount, in some areas thirty-five shillings is more usual, and recently a few fathers have successfully demanded much higher sums, up to £10, for their daughters. The edict implied that at least thirty shillings should be offered in every marriage, but marriages have been and still are being contracted without any legalization payment, as can be seen from Table VIII. However, from this table it appears that in the last twelve years legalization payments have been offered in a greater proportion of marriages than previously.

The most important right established by this payment is that to damages in the event of adultery. If a man has made the legalization payment he is sure that when his wife commits adultery the court will order both the woman and her lover to pay him damages. Adultery suits are the commonest heard in court and the legalization payment clearly establishes the fact that the man and woman are married in the eyes of the law. If the first payment a man makes is bridewealth, the legalization payment falls away, and he gains the exclusive right of sexual access to his wife without any further payment. In this respect we can see a carry-over from the old system in which bridewealth followed after 'snuff-box', and adultery was punishable by death. Usually if bridewealth is paid in a subsisting marriage, it comes after the legalization payment and is additional to it. The one payment relates to the custody of the children, the other to the sexual services of the woman. We have noted that bridewealth can be offered on the occasion of divorce when perhaps no legalization payment has ever been made.

[1] Cf. Young, *Notes on the customs and folk-lore of the Tumbuka-Kamanga peoples*, p. 61; Coupland, *The Native tribes of North-Eastern Rhodesia; their laws and customs* (Occasional Papers No. Five, Royal Anthropological Institute), p. 25; Barnes, op. cit. p. 227

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easily. Paramount Chief Mpezeni III, in a Christmas broadcast in 1948, addressed to Ngoni workers in the towns, said

> Think not that I divorce your wives merely when they come to court. I do so when I see you send no money or clothes or you stay away for more than five years, not writing or sending anything to your families. I do this when they come to see me, both she and your parents. You do no good to your families by forgetting them all when you are in a strange country.

The grounds on which divorce is granted are more or less the same in the court and the village, but although the court, like the village assembly, thinks of itself as being primarily concerned with 'teaching people to live well together', it is also, unlike the village, concerned with reinforcing the power of the Native Authority bureaucracy and upholding the authority of the chiefs. Hence the court gives greater weight to the formalities of marriage and the theoretical rights inhering in the different payments. The chiefs, councillors, assessors, clerks, and police who make up the court are all men, whereas in the village meeting old and important women give their views and they are listened to with attention. My impression is that women are less favoured in the courts than they are in the village.

The law that the legalization payment shall be not less than thirty shillings was agreed to at a meeting of chiefs and their supporters in about 1944. Informants said that the law was introduced so that women as well as men could be punished for their adultery. It was argued that in a marriage in which no bridewealth had been paid, and only a few shillings as the legalization payment, the woman's kin could not in equity be called upon to pay damages on her behalf to her husband when she committed adultery. Adultery was thought to have increased, and women were as much to blame as men. By making the legalization payment a considerable amount, equal at the time to two months wages, it became possible to punish the woman in the same way as her lover. As we have seen, not everyone keeps this law, and women are married with a smaller amount as legalization payment, or with no payment at all. It is held by some people that a marriage certificate will not be issued unless at least thirty shillings legalization payment has been handed over, but in fact it is still possible to get a certificate when some smaller sum has been paid. In the light of developments in other tribes of the Eastern Province, it seems likely that before long thirty shillings legalization payment will become necessary before a certificate can be obtained.

One copy of the certificate is given to the man and another to the woman. With the help of her certificate, and of letters from her husband showing he is calling her to join him, a woman can get a pass from the court allowing her to buy a ticket on the bus going to the railway line or to Nyasaland. These certificates have therefore considerable value, and one woman's pass may be used by another

4: Barnes E-5 (1946-1949)1951 FR5 Ngoni FR5
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if the latter is unable to leave the area legally.[88] Various devices have been introduced to prevent women from using other people's passes, such as recording finger-prints on the certificate. On the other hand there are a great variety of ways in which women contrive to leave the area without a proper pass, such as marrying the bus driver for the duration of the journey, getting off the bus and walking round the control points, and so on.

13. The Administration and the missions

Under the Laws of Northern Rhodesia, which guide the Administration, the only valid marriages between Africans are those performed in accordance with 'customary tribal law'. There has never been any systematic attempt to codify the rules implied by this phrase, and in any particular case that comes before the Administration's courts, the views of individual African assessors must carry weight. The tendency has been to try and discover what used to happen in the old days rather than what was the *de facto* law at the time. On the other hand, there appears to have been a feeling that women were entitled to certain rights in equity that may perhaps have been associated with the proviso that 'customary tribal law' shall not be administered when it is 'repugnant to natural justice and morality'. The Administration has certainly been sympathetic towards deserted wives seeking divorce and has encouraged Native Courts to allow their pleas where the husband has been many years away and has not written home. In the past the District Officer on tour has divorced batches of women who had applied in vain to the Native Courts for divorce on the ground of desertion. It has been argued by the Administration that since chiefs depend on the gifts of returned labour migrants to supplement their own income, they are reluctant to offend men by divorcing their wives in their absence. There are fewer divorces, in relation to the same number of pleas, granted in Ngoni courts than among the neighbouring Cewa, who are subject to the same Administrative and mission influences. The Ngoni find no consolation in this comparison. They merely observe that there are more divorces now than there used to be, and blame the Whites for the change.

The missions are all concerned with the development of Christian marriage, but their ideas as to what this is differ from one denomination to another, as do their views on the relationship of Christian to other types of marriage. The White Fathers and the Universities Mission to Central Africa do not allow divorce, while the Dutch Reformed Church Mission does. The U.M.C.A. insist that all 'customary obligations' shall be fulfilled before a marriage can be solemnized between Christians, the White Fathers

[88] Cf. Barnes, op. cit. pp. 245f for the rules regulating the movement of women beyond Fort Jameson District.

4: Barnes E-5 (1946-1949)1951 FR5 Ngoni FR5
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This attitude of resignation, while still very common, has to some extent been replaced by a more constructive attitude among members of the Native Authority bureaucracy. Chiefs, councillors and other officials have considerable political power and are encouraged to use it by the Administration, whose policy it is to strengthen the hand of the Native Authority.[18] Court members introduce changes in law with some confidence, although this is still done under the guise of a re-enforcement of a forgotten traditional law. Chiefs, under increasing pressure from their people and the Administration, endeavour to take action to modify social life in their areas. As yet political action is not very sophisticated, and the workings of the Administration are not well understood. In those fields of activity where Administrative interest is strongest, such as price control, food production, and the amalgamation of villages, the Ngoni response tends to be in moral rather than in political terms. It is wrong that the price of maize should be so low, the good man knows best how to cultivate his own garden, people in a village must live peacefully together. By contrast, in the field of marriage, where the Administration is comparatively disinterested, and where the wishes of the Administration, missions and Ngoni do to a large extent coincide, the bureaucracy has been able to act in a more positive manner. The thirty shillings law is one of the rare legislative acts of the Ngoni chiefs and people, and it is significant that the law was not made until 1944, fifteen years after the passing of the Native Authorities Ordinance. It is said that the law was made so that women could be punished for adultery in the same way as men. At the meeting at which the law was agreed upon, it was also decided that bridewealth should be a minimum of six pounds or one cow. Whereas the ruling about legalization payments is still remembered and increasingly followed, the bridewealth rule has been largely forgotten. This attempt to check adultery by increasing the legalization payment was in general agreement with the wishes of the Administration and more or less with the wishes of the missions. It was possible to envisage a decrease in adultery due to a clarification of rights *in rem* without any other major structural changes, whereas the re-introduction of bridewealth as a universal payment could only be envisaged in terms of a return to the patrilineal virilocal residential system of 'the time of peace'. It would hardly have been possible for the Native Authority to have restored the old system had they wished to do so. Ngoni village life is now part of a system wider than the chiefdom and there are other ways of acquiring wealth and status than within the residential system and at the pleasure of the Paramount Chief.

11. Marriage in an omnidirectional kinship system

We may characterize the change from the old order to the new

[18] Cf. Barnes, op. cit. 'Some aspects of political development . . .'.

5:Allan C-5 (1941) 1949 FR5 Ngoni FR5
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approximately on the contour and parallel to demarcated 'marker' ridges on the true contour. A system of contour cultivation has now been developed which is proving practical and effective. The 'marker' ridges are demarcated at a vertical interval of two feet six inches and are gradually converted by the people into more or less broad-based banks. In the first year the ridge is built up to a base width of six feet and a height of not less than six inches. The base and height are increased until a permanent bank eight feet wide at the base and eighteen inches in height is completed. Villages on the 'ten yards' system can change over to contour cultivation if the majority of people elect to do so. New villages are allowed to move into resettlement areas in the Eastern Province only on condition that they agree to practice contour cultivation; they are given four or five years to adapt themselves to the new system but in many cases practically the whole of the new gardens are under ridges by the end of the second year. Cultivation practice has been adapted to the new system and, meanwhile, experiments are being made to find the best methods of ridging, spacing and planting of crops for use in conjunctions with the ridge cultivation system.

In the Ndola District gardens are laid off between contour grass strips at vertical intervals of two feet. The people are then encouraged to convert the grass strip into three parallel ridges approximating to the normal dimension of their mounds for subsidiary crops and to plant the ridges with beans and cowpeas; or to make one or two such ridges and plant the remainder of the strip with groundnuts on the flat—a combination of contour ridges and strip cropping. This method, an adaptation of normal Lamba practice was adopted after a series of trials to find the simplest method of erosion control acceptable to these somewhat backward people. The object is not only to check erosion but to restore the cultivation of subsidiary crops, now almost entirely neglected. The planting of the ridges to beans and cowpeas and the strips to groundnuts restores the balance between cereals and legumes and should allow of a small surplus for sale. The idea seems to be less unpopular than one might expect and most villages have made a satisfactory effort to convert the strips into ridges for the cultivation of subsidiary crops.

Contours are laid off by trained African Assistants of the Department of Agriculture, using road tracers, and it has been found necessary during the initial stages of settlement to have one or two African Assistants* for at least every ten villages or, approximately, for every 600 to 1,000 people. Constant supervision is maintained during the initial phase by the African Agricultural Assistants in co-operation with District Messengers and the Native Authorities. This supervision is irksome and resented by some of the older people but it is, perhaps, significant that at a recent meeting of the African Regional Council of the Western Province after the subject had been freely debated, the council voted by a large majority for an increase in the number of Agricultural Capitaos.

Fruit tree planting has also been introduced and in the Eastern and Western Provinces laws made by the Native Authorities require each household

* Usually one and a borrow assistant at Ndola.

5: Allan C-5 (1941)1949 FR5 Ngoni FR5 Mpezeni

to plant a small number of trees (four per hut is the general rule). Seeds, seedlings and cuttings of mango, mulberry, lemon, guava, pawpaw and banana are distributed free from Departmental and Native Authority nurseries. The trees are planted within or about the sites of the new villages and the people are on the whole willing enough to plant them but show little inclination to care for them once they have been planted. Losses from drought and damage from fowls and small stocks are fairly heavy and in the Western Province two severe winters in succession have frosted off a number of young plantations. It is still uncertain whether this attempt to establish village orchards will be successful.

The only other general restrictions on land use are the prohibition of cultivation within demarcated areas and of late burning of grass and bush. In all village blocks non-cultivation areas have been demarcated for the preservation of streamsides and steep slopes. Areas have also been demarcated as Forest Reserves for future timber supplies and for the protection of watersheds, and in some cases land which is not required for present use has been reserved against the future needs of a growing population. Late burning of grass and bush is prohibited and the responsibility for early burning of the village blocks is placed upon the headman concerned. These prohibitions are enforced by Native Authority Rules.

§ 8. *Housing*

In most of the resettlement areas an attempt has been made to improve the standard of housing and the layout of villages and on the whole this has been fairly successful. When the permanent site has been selected (sometimes a lengthy business involving consultation with the ancestral spirits) the lay-out of the village is planned and the situation of each building marked out by an African Assistant. The people are persuaded to adopt a somewhat higher standard of building, but no compulsion is used and they have generally been willing enough to do so if the standard expected is not too high. The standard of housing and village lay-out is certainly an improvement, if not a very great one, on the standard within the Reserves.

In the Western Province a number of model villages have been built of Kimberley brick. These were built by the villagers themselves, with the assistance of a small team of skilled builders and thatchers employed by the Administration. The object was to stimulate a desire for better housing and it seems to have done so in some degree since most of the other villages have now volunteered to become 'models'.

§ 9. *Assisted Movements*

The movement of a village for a comparatively short distance, a day's journey of fifteen miles or so does not present any particular difficulty and the African has long been used to such movements. If it is impossible

8: Barnes E-5 (1946-1949) 1951 FR5 Ngoni FR5

blame the Europeans for it; but it remains part of the distinctive cultural heritage of the tribe.

As we might expect, notions of this kind do not provide sanctioned standards of conduct nor ideal patterns towards which Ngoni strive. They may be used to explain or justify a state of affairs, as we have seen, but they do not directly determine action. An individual who departs from traditional custom, in these terms, is not necessarily censured. Indeed, men who are knowledgeable about the glorious past do not follow traditional ways any more than do less-well-informed people. According to tradition the Ngoni are a virilocal people, yet if a man goes to live with his wife's relatives his own kinsfolk cannot force him to return by appeal to this virilocal tradition. Traditionally a man avoids his mother-in-law. Yet I once saw an aristocratic man, a great authority on traditional history, on leave from work sitting on a verandah chatting with his mother-in-law. I said to him, "I thought a man should avoid his mother-in-law." He laughed and replied, "Yes, so he should. This behaviour is disgusting, and as soon as I come to live here permanently I shall see that customs are properly followed."

In certain situations the Fort Jameson Ngoni appear as a tribe in contrast to other tribes. The tribe is an administrative unit, with its own chiefs, its own area and sometimes its own District Officer. Representatives from each tribe in the region sit together to form the Native Urban Court and the Provincial Advisory Council. The Ngoni representatives on these bodies tend to present distinctively Ngoni views to contrast with the views of their colleagues. Thus there may be a discussion on wills. There is an Ngoni view, a Cewa view, and so on. The Ngoni representative repeats the old story about bridewealth, virilocal residence, the rights of the eldest son, and these are recorded as being the Ngoni custom in the matter. Even when discussing such an apparently modern issue as wills, the tendency is to go back to this mythical past. It is in terms of this past, in reality as well as in myth, that Ngoni are different from their neighbours. In the present, as contrasted with Europeans, Ngoni and Cewa are much the same. Ngoni pay bridewealth in the same way as the English eat roast beef. It is a national characteristic, but one located in the minds of men rather than observable in their actions or their aspirations. Instead of the scarifications and totemic observances which distinguish their neighbours, Ngoni express their tribal identity by having distinctive customs which, conveniently, need not be followed.

In the Native Urban Court a similar process appears to operate, but here, unlike at the Advisory Council, there is a greater need to come to grips with real situations which require action, and tribal distinctiveness is tempered with practical reality. In the purely Ngoni Native Courts appeals are made to traditional practice in a different way. The courts are required by the Administration to follow tribal custom and people know that the courts are bound in this way. In fact, however, the courts have continually to deal with new situations and to make decisions which are unprecedented. This is done

under the guise of drawing attention to some good Ngoni custom which has been neglected. Thus, for example, a man came to court saying that he was always quarrelling with his wife and that he wished to divorce her. The bench granted the divorce and awarded the woman 30s. damages. The litigant protested. The junior member of the bench, a man aged about 25 years, said, "Don't you know, it has always been the custom in this court to award 30s. damages against men who divorce their wives?" Yet this was a comparatively recent practice and the litigant's protest seemed, to me, to be quite justified. The young man had been on the bench only about eighteen months. Even without Administrative stimulus, deliberate acts of legislation are not unknown among the Ngoni, but they require considerable discussion and probably a tribal meeting. It is easier, particularly for a court member as junior as the man in question, to appeal to the unwritten corpus of tribal custom when introducing a new rule. An analogous process in our own society is perhaps concealed under the fiction that judges do not make law. Ngoni do not quote specific precedents in court, and in this undocumented environment new decisions, if they are not soon challenged, become part of what has always been the custom since time immemorial.

We may then summarize by saying that their common store of notions about the past provides Ngoni with a means of distinguishing themselves from similar groups at a time when the cultural distinctions between these groups are in fact becoming less and less. In the Courts, appeals to the value of traditional custom are made to gain acceptance for new rulings, while in ordinary life breaches of custom are widespread and are not censured.

When we consider legends associated with particular groups within the tribe the picture is rather different. Separate groups in the population remember, and sometimes act in the light of, particular incidents in the past which link them to other similar groups. Thus village A is linked with village B because of some incident in the past when the erstwhile leader of A captured the leader of B, or because at one time the leaders of A and B were brothers. These incidents, and the present inter-group relations with which they are associated, are not known universally but only by the groups concerned and by those near them. Yet in many ways these incidents are of greater practical significance than the more widely known tribal history. The relationships to which they give rise, or rather such of these relationships as have persisted, are remembered at funerals, in the formal exchanges of beer, and in the settlement of quarrels. There are at first glance no sanctions to maintain relationships of this kind, and indeed the very separate existence of two villages A and B may be due to a quarrel followed by a split. But although, for example, when an old woman dies in A there is no way of directly forcing a messenger to carry the news to B, there is in fact a great deal of social pressure on both groups to keep alive the connection between them. This arises from the general responsibility placed on everyone to preserve the peace, that is, to preserve the existing social order intact. If there are

10: Barnes E-5 (1946-1949) 1959
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said to be due to their definite knowledge of common patrilineal descent rather than due to the common name. At the other extreme are names such as *tembo*, *banda*, and *phiri*, which are derived from the neighbouring tribes of the region and are very common and have no connotation of company.

Prior to the arrival of the Ngoni descent-names were inherited in the matrilineal line by the Cewa, Nsenga, and other tribes of the Eastern Province. Under Ngoni influence, the rule was reversed and the great majority even of recently incorporated Ngoni now bear the same names as their fathers. Some people do take the descent-names of their mother, as, for example, a child born in adultery who is not accepted by its mother's husband, or one whose father dies young so that it is brought up by a relative of its mother. As with the Tonga of Mazabuka, some descent-names have locally alternative forms, and in one instance men and women take different names.[1]

Appeal is sometimes made for protection and help on the basis of a common descent-name, but this is not a very strong tie and is invoked only when no closer link can be found. The principal uses of descent-names are in polite forms of address and in connexion with beer-drinking.

Marriage Payments

The initiative in choosing a spouse usually lies with the man. A woman who takes too much initiative in this matter is regarded, usually correctly, as likely to be unfaithful. In the old days marriages were more frequently arranged by the parents of the couple concerned, but now this happens only when the man is away. Men who are on the farms or in the mines send money home to brothers or fathers with instructions to find them suitable wives, and to offer the money as the legalization payment. During the 1939–45 War this arrangement was continued by soldiers who were away.

The most important payment in connexion with marriage is that made by the bridegroom to the bride's father which I shall call the legalization payment.[2] This payment is the one that establishes unequivocally the right of the husband to damages should his wife commit adultery or be allowed by the court to divorce him. It must be observed, however, that damages *may* still be awarded to the husband under certain conditions where no legalization payment has

[1] The name *nsaka* for a man becomes *nsaka* for a woman in certain areas.
[2] *Cimalo*, no plural. Cf. Young, *Customs and Folk Lore*, p. 61.

10: Barnes E-5 (1946-1949) 1959
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583 [671] been made. It is the legalization payment that is recorded on the marriage registration certificate when one is issued.

Often this payment is postponed until some years after marriage and sometimes it is never made at all. It is generally £1. 10s., and is normally provided by the bridegroom himself out of his savings, although in the old days a man would have been helped by his father. The money goes to the bride's father, and there is no legal obligation on him to share the money with his relatives, although he may do so. Marriage ties can be reinforced by a whole series of ceremonies and ceremonial exchanges and payments between the man's people and the woman's people, and a marriage in which all these ceremonies have been performed is regarded as being 'well fixed'. In such a marriage the parents and siblings of the couple have come to know each other, have collaborated in ritual activities, and have probably had occasion to deliberate together as a court of conciliation in settling quarrels between the couple. This line of development is seldom taken in a marriage in which the legalization payment has not been made. If the husband refuses to pay, then the wife's people will not brew beer for him and his parents, and will not use their influence with his wife to maintain the marriage. We may say that in a well-fixed marriage the two families are linked together, and that in one that is not well fixed it is only the two individuals who are linked. Indeed when no payments have been made it is common for the bride's relatives to profess ignorance of the name of the husband, or at least of his parents' names. No action can be taken in the court to enforce marriage payments, although in an adultery or divorce case the court may order the legalization payment to be made.

585 476 578 The ceremonies of marriage should not be thought of merely as occasions for harmonious co-operation. They may also become the vehicle for the expression of aggression between the two families involved. This is particularly true of the obligation on the man to bring a party of his friends to hoe in the garden of his father-in-law. The hoeing party may do more harm than good to the crops if the present offered them by the father-in-law is considered inadequate.

583 178 [231] Prior to the conquest of the tribe the principal marriage payment was bride-wealth,[1] consisting of so many head of cattle. In those days, according to informants, no legalization payment was made. Nowadays bride-wealth is paid only in a small proportion of marriages, and rarely until after several children have been born. In the old days

[1] *Malobolo*. Cf. the Zulu verb *uku-lobola* and noun *ilobolo*.